

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED

2012 MAR 20 PM 00
CLASS-ACTION
COMPLAINT
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALBERT RUDGAYZER, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

-against-

YAHOO!, INC.,

Defendant.

E-filing

CV 12 1399

LB

PRELIMINARY STATEMENT

1. Defendant, Yahoo!, Inc. ("Yahoo"), provides email addresses to members of the public, such email addresses having the domain name of yahoo.com. Yahoo requires certain information from a person seeking to obtain an email address from Yahoo, including the person's first and last names. Thereafter, Yahoo, without any prior notice to its email users, includes the users' first and last names in the emails that the users send from their Yahoo email addresses.

2. Plaintiff, Albert Rudgayzer ("Rudgayzer"), brings this action individually and as a class action on behalf of all other similarly situated persons and entities located in the United States who, without prior notice, have had their names disclosed when sending emails from their Yahoo email addresses, other than Yahoo, its officers, employees, and representatives, and their families (the "Class"), at any time during the period beginning four years prior to the commencement of this action and continuing until the resolution of this action (the "Class Period").

3. Plaintiff, individually and on behalf of the other Members of the Class, alleges breach of contract and seeks a declaratory judgment, monetary damages, injunctive relief, and costs and disbursements.

JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. § 1332(d)(2)(A).

5. The matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

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6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(a)(1) and (2).

7. More than two-thirds of the Members of the Class are citizens of states other than California.

PARTIES

8. Rudgayzer is a citizen of the State of New York.

9. Yahoo is a corporation organized and existing under the laws of Delaware. Yahoo's principal executive office is at 701 First Avenue, Sunnyvale, California 94089.

FACTS

10. Yahoo provides, to members of the public, an email service in which Yahoo provides email addresses with the domain name of yahoo.com ("Yahoo Email Addresses"); e.g., username123@yahoo.com.

11. Yahoo requires a person in the United States who wishes to obtain a Yahoo Email Address to provide Yahoo with certain information, including the following: first name; last name; gender; birthday; country; and postal code.

12. Yahoo, through its default settings, knowingly and without prior notice to, or consent from, Yahoo Email Users, adds a User's first and last names in the header of the emails that the User sends from his Yahoo Email Address ("Yahoo Email"), such that the recipients of the Yahoo Email are given this information.

13. Yahoo's Terms of Service constitute a contract ("Yahoo Contract").

14. The Yahoo Contract provides that "the parties shall be governed by the laws of the State of California without regard to its conflict of law provisions and that any and all claims, causes of action or disputes (regardless of theory) arising out of or relating to the [Yahoo Contract], or the relationship between you and Yahoo!, shall be brought exclusively in the courts located in the county of Santa Clara, California or the U.S. District Court for the Northern District of California."

15. The Yahoo Contract incorporates Yahoo's Privacy Policy.

16. One of the provisions ("Personal-Information Provision") of the Yahoo Contract states, in relevant part:

Yahoo! collects personal information when you register with Yahoo!

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1 ... *** When you register we ask for information such as your name,
2 [alternate] email address, birth date, gender, ZIP code, occupation,
3 industry, and personal interests. ... *** Yahoo! uses information for
4 the following general purposes: to customize the advertising and
5 content you see, fulfill your requests for products and services,
6 improve our services, contact you, conduct research, and provide
7 anonymous reporting for internal and external clients. ... *** Yahoo!
8 does not rent, sell, or share personal information about you with other
9 people or non-affiliated companies except to provide products or
10 services you've requested, when we have your permission.

11 17. By disclosing the first and last names of the senders of Yahoo Emails, Yahoo has
12 breached the Personal-Information Provision of its contracts.

13 18. Yahoo has intentionally concealed, during the registration process, the material fact
14 that Yahoo discloses the first and last names of the senders of Yahoo Emails.

15 19. Yahoo has intentionally deprived Yahoo Email Users of their legal rights not to have
16 their first and last names disclosed when they send Yahoo Emails.

17 20. Rudgayzer became a Yahoo Email User on or about October, 2011.

18 21. When Rudgayzer sent e-mails from his Yahoo Email Address, those e-mails
19 contained his first and last name.

20 22. Plaintiff has complied with all of his obligations under the Yahoo Contract.

21 23. Pecuniary compensation would not afford adequate relief to Plaintiff and the other
22 Class Members.

23 24. It would be extremely difficult to ascertain the amount of monetary damages that
24 would afford adequate relief to Plaintiff and the other Class Members.

25 COUNT I

26 **[Breach of Contract under California law]**

27 25. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1"
28 through "24" inclusive of this Complaint as if fully set forth herein.

26 26. The Yahoo Contract constitutes a valid, binding, and enforceable contract.

27 27. Yahoo's disclosure of its email users' first and last names in the manner described
28 herein constitutes a breach of the Yahoo Contract.

29 28. As a result of Yahoo's breach of contract, Plaintiff and the other Class Members are

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1 entitled to: a judgement pursuant to 28 U.S.C. § 2201 declaring that Yahoo's conduct constitutes
2 breach of contract; actual damages; nominal damages pursuant to California Civil Code Section 3360
3 in the event that Yahoo's breach of contract has caused no appreciable detriment; and punitive
4 damages.

5 CLASS ALLEGATIONS

6 29. Plaintiff brings this action individually, and as a Class Action pursuant to Federal
7 Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of all persons and entities who, without prior
8 notice, have had their names disclosed when sending emails from their Yahoo Email Addresses,
9 other than Yahoo, its officers, employees, and representatives, and their families (the "Class"), at any
10 time during the period beginning four years prior to the commencement of this action and continuing
11 until the resolution of this action (the "Class Period").

12 30. The Members of the Class are so numerous that joinder of all Members is
13 impracticable.

14 31. There are more than 5,000,000 individuals and entities whose claims are similar to
15 Plaintiff's claims, which are typical of the claims of the other Members of the Class.

16 32. Plaintiff would fairly and adequately protect the interests of the Class. Indeed,
17 Plaintiff's interests are, for purposes of this litigation, coincident with the interests of the other
18 Members of the Class. Plaintiff has no interests that are antagonistic to, or in conflict with, the other
19 Members of the Class.

20 33. A class action is superior to all other available methods for the fair and efficient
21 adjudication of this controversy. Because the Class is so numerous that joinder of all Members is
22 impracticable, and because the damages suffered by most of the individual Members of the Class are
23 too small to render prosecution of the claims asserted herein economically feasible on an individual
24 basis, the expense and burden of individual litigation makes it impractical for Members of the Class
25 to adequately address the wrongs complained of herein. Plaintiff knows of no impediments to the
26 effective management of this action as a class action.

27 34. Common questions of law and fact predominate over questions that might affect only
28 individual Members of the Class. Among the questions of law and/or fact common to the Class are:

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1 (i) whether Yahoo requires a person who wishes to obtain a Yahoo
2 Email Address to provide Yahoo with such person's name;

3 (ii) whether Yahoo, through its default settings, and without prior
4 notice to, or consent from, Yahoo Email Users, adds a User's first and
5 last names in the header of Yahoo Emails, such that the recipients of
6 Yahoo Emails are given this information;

7 (ii) whether Yahoo knowingly engages in the conduct described in
8 paragraph 34(ii) herein;

9 (iii) whether Yahoo breached its contracts with Yahoo's email users;

10 (iv) whether Yahoo's email users are entitled to a judgement
11 declaring that Yahoo's conduct constitutes breach of contract;

12 (v) whether Yahoo's email users are entitled to actual damages as a
13 result of Yahoo's breach of contract;

14 (vi) whether Yahoo's email users are entitled to nominal damages as
15 a result of Yahoo's breach of contract in the event that Yahoo's
16 breach of contract has caused no appreciable detriment; and

17 (vii) whether Yahoo's email users are entitled to punitive damages as
18 a result of Yahoo's breach of contract.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff demands judgment against Defendant:

21 (a) Declaring, pursuant to 28 U.S.C. § 2201, that Defendant's conduct as set forth herein
22 constitutes breach of contract;

23 (b) Preliminarily enjoining Defendant, pursuant to Rule 65 of the Federal Rules of Civil
24 Procedure, from continuing to engage in the conduct described herein;

25 (c) Permanently enjoining Defendant, pursuant to Calif Civil Code Section 3422 and the
26 general legal and equitable powers of this Court, from continuing to engage in the conduct described
27 herein;

28 (d) Awarding Plaintiff and the other Members of the Class actual damages based upon
29 Defendant's breaches of contract;

30 (e) Awarding Plaintiff and the other Members of the Class nominal damages pursuant
31 to California Civil Code Section 3360 based upon Defendant's breaches of contract in the event that
32 such breaches caused no appreciable detriment;

33 (f) Awarding Plaintiff and the other Members of the Class punitive damages based upon

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1 Defendant's breaches of contract;


2 (g) Awarding Plaintiff and the other Members of the Class litigation costs;

3 (h) Awarding Plaintiff reasonable legal fees; and

4 (i) Awarding Plaintiff and the other Members of the Class and such other and further
5 relief as this Court deems just and proper.

6 Dated: March 19, 2012

7 Respectfully submitted,

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12 (212) 260-5650

13 Plaintiff *Pro Se*
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